

RESOLUTION NO. 2010-05-04

A RESOLUTION OF THE CITY OF WESTON TERMINATING THE SEPTEMBER 11, 2008 AGREEMENT FOR ENGINEERING, ARCHITECTURAL, PLANNING, AND CONSULTING SERVICES WITH BUCHER, WILLIS & RATLIFF CORPORATION WITHOUT CAUSE, AUTHORIZING THE MAYOR TO PROVIDE NOTICE OF TERMINATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Weston, Texas is a Type A general-law municipality located in Collin County, created in accordance with the provisions of Chapter 6 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, on September 9, 2008, the City Council approved the engineering, architectural, planning and consulting services agreement, dated September 11, 2008, with Bucher, Willis & Ratliff Corporation for the City of Weston; and

WHEREAS, the City Council now desires to terminate said legal services agreement "without cause" in accordance with the provisions of Exhibit "A" to the Agreement governing termination.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTON, TEXAS:

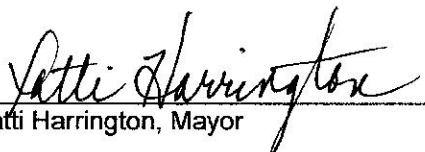
SECTION 1.

That the engineering, architectural, planning and consulting services agreement ("Agreement") with Bucher, Willis & Ratliff Corporation is hereby terminated without cause in accordance with the provisions of Exhibit "A" to the Agreement and that the Mayor is authorized to provide notice of termination thereof. A copy of the Agreement and notice of termination shall be on file with the office of the City Secretary.

SECTION 2. EFFECTIVE DATE

This resolution shall be effective from and after its passage and adoption by the City Council.

RESOLVED AND ENTERED this the 19th day of May 2010.



Patti Harrington, Mayor

ATTEST:



Leeann Oland, City Secretary



**MASTER SERVICES AGREEMENT FOR ENGINEERING, ARCHITECTURAL, PLANNING,
AND CONSULTING SERVICES**

THIS AGREEMENT, made and entered into this 11th day of September, 2008, b y and between the City of Weston, Texas, hereinafter referred to as the "Owner", and Bucher, Willis & Ratliff Corporation with offices located at 2620 County Road 1106, Anna, Texas, hereinafter referred to as the "Consultant."

WITNESSETH:

WHEREAS, the Owner desires to have the Consultant provide engineering, architectural, planning, and consulting services for the City of Weston, Texas from time to time and as requested in writing by the Owner.

WHEREAS, the Owner has selected the Consultant to perform the services as described herein.

NOW, THEREFORE, the Owner and the Consultant in consideration of their mutual covenants herein agree in matters pertaining to the performance or furnishing of professional services by the Consultant and the payment for those services by the Owner as set forth below. This Agreement will become effective on the date first above written.

**ARTICLE I
CONSULTANT'S RESPONSIBILITIES**

The Consultant shall perform for or furnish to the Owner professional services to which this Agreement applies as hereinafter provided. The Consultant shall serve as the Owner's prime design professional. The Consultant may employ subconsultants as Consultant deems necessary to assist in the performance or furnishing of professional engineering and related services hereunder. The Consultant shall not be required to employ any subconsultants which are unacceptable to the Consultant.

The standard of care for all professional services performed or furnished by the Consultant under this Agreement will be the care and skill ordinarily used by members of the Consultant's profession, practicing under similar conditions at the same time and in the same locality. The Consultant makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with the Consultant's services.

**ARTICLE II
OWNER'S RESPONSIBILITIES**

The Owner shall do the following in a timely manner so as not to delay the services of the Consultant and shall bear all costs thereto:

1. Designate in writing a person to act as Owner's representative with respect to the services to be performed or furnished by the Consultant under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to the Consultant's services for the Project.

2. Make available to the Consultant all existing records, maps, plans and other information possessed by Owner which are relevant to the Consultant in the completion of the work under this Agreement.
3. Provide all criteria and full information as to Owner's requirements for the work, including design objectives and constraints, performance requirements, any budgetary limitations; and furnish copies of all standard forms, design standards and construction standards which Owner will require to be included in the Plans and Specifications.
4. Furnish to the Consultant, upon the request of the Consultant for performing the services, data prepared by or services of others, including without limitation explorations and tests of subsurface conditions at or contiguous to the work, drawings of physical conditions in or relating to existing surface or subsurface utilities or structures at or contiguous to the work, hydrographic surveys, environmental assessments, impact statements and other relevant environmental or cultural studies pertaining to the work and adjacent areas.
5. Furnish existing relevant property descriptions and zoning, deed and other land use restrictions.
6. Be responsible for, and instruct the Consultant to rely upon, the accuracy and completeness of all information furnished pursuant to this Article II, Owner's Responsibilities. Consultant may use such data and information in performing or furnishing services under this Agreement.
7. Arrange for access to and make all provisions for the Consultant to enter upon public and private property as required for Consultant to perform services under this Agreement.
8. Examine all alternate solutions, studies, reports, sketches, plans, specifications, proposals and other documents presented by the Consultant and render in writing decisions pertaining thereto.
9. Attend pre-bid conferences, bid openings, pre-construction conferences, construction progress and other work related meetings and final inspections.
10. Give prompt written notice to Consultant whenever Owner observes or otherwise becomes aware of any development that affects the Scope of Services or the Time Schedule of the Consultant in the performance or furnishing of the required services for the Project, or any defect or nonconformance in the Consultant's services or in the work of any Contractor.

**ARTICLE III
WORK ORDERS:**

**SCOPE, SCHEDULE, AND BUDGET OF SERVICES
TO BE PROVIDED BY THE CONSULTANT**

The scope of services under this agreement includes all services offered by the Consultant that the Consultant can legally provide under the law, and includes, but is not limited to engineering, architectural, planning, and other specialty services provided by the Consultant.

Work will be performed at the rates listed in Exhibit A or as otherwise provided in negotiated fee schedules approved with individual Work Orders.

All work performed by the Consultant will be performed under a written Work Order, refer to Exhibit B, signed by a duly authorized agent of the Owner or under a Work Plan approved by resolution of a simple majority of the City Council of the City of Weston, Texas. All Work Orders shall include a written scope of work, a project schedule, and fee schedule for the work.

ARTICLE IV PAYMENT TERMS AND CONDITIONS

Consultant Payment for work under this Agreement shall be made in installments billed not more frequently than once each month upon receipt of invoices from the Consultant. If the Owner fails to make any payment due the Consultant within thirty (30) days after receipt of Consultant's invoice, the amounts due the Consultant will be increased at the rate of 1.5% per month from said thirtieth day. Payment shall be remitted to Consultant by Owner as instructed on invoices.

ARTICLE V GENERAL PROVISIONS

1. Times for Rendering Services: The Consultant's services and compensation under this Agreement have been agreed to in anticipation of orderly and continuous progress of the Project through completion of the Design Phase and the Construction Phase. Specific periods of time for rendering services are set forth in individual Work Orders as described in Article III, Work Orders, in this Agreement, by which times defined services are to be completed. If such periods of time are changed through no fault of the Consultant, the rates and amounts of compensation provided for therein shall be subject to equitable adjustment.

If the Owner fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, the Consultant shall be entitled to equitable adjustment of rates and amounts of compensations to reflect reasonable costs incurred by Consultant as a result of the delay or changes in the various elements that comprise such rates of compensation.

2. Reuse of Documents: All documents including Plans and Specifications provided or furnished by the Consultant pursuant to this Agreement are instruments of service; and Consultant shall retain an ownership and property interest therein whether or not the work is completed. The Owner may make and retain copies for the use by Owner and others; however, such documents are not intended or suitable for reuse by Owner or others on extension of the Project or on any other Project. Any such reuse without written approval or adaptation by the Consultant for the specific purpose intended will be at the Owner's sole risk and without liability to the Consultant, and the Owner shall indemnify and hold harmless the Consultant from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.
3. Insurance: The Consultant shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom. The Consultant shall list the Owner as an additional insured on the Consultant's general liability insurance policy.

The Owner shall list the Consultant as an additional insured on any general liability or property insurance policies carried by Owner which are applicable to the Project. The Owner shall require the Contractors to purchase and maintain general liability and other insurance as specified in the Contract Documents and to list the Consultant as an additional insured with respect to such liability, property and other insurance purchased and maintained by the Contractors. All policies of property insurance shall contain provisions to the effect that the Consultant's interests are covered and that, in the event of payment of loss or damage, the insurers will have no rights of recovery against any of the insured or additional insured thereunder.

4. Termination: This Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party; provided, however, that in any such case, the Consultant shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the payment provisions of this Agreement. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement shall be delivered to the Owner when and if this Agreement is terminated, but it is mutually agreed by the parties that the Owner will use them solely in connection with the work performed by the Consultant, except with the written consent of the Consultant.
5. Term of Agreement: The initial term of this Agreement is three (3) years beginning from the date of execution by both parties. The Agreement is automatically renewed in 3 year terms unless cancelled by either party with thirty (30) days written notice prior to the end of any respective term; provided, however, that in any such case, the Consultant shall be paid the reasonable value of the services rendered up to the time of cancellation on the basis of the payment provisions of this Agreement. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement shall be delivered to the Owner when and if this Agreement is terminated, but it is mutually agreed by the parties that the Owner will use them solely in connection with the work performed by the Consultant, except with the written consent of the Consultant.
6. Controlling Law: This Agreement is to be governed by the law of the principal place of business of the Consultant.
7. Indemnification: The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold the Owner harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the Consultant's negligent acts, errors or omissions in the performance of professional services under this Agreement and those of his or her subconsultants or anyone for whom the Consultant is legally liable.

The Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Consultant harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the Owner's negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the Owner is legally liable, and arising from the Project that is the subject of this Agreement.

The Consultant is not obligated to indemnify the Owner in any manner whatsoever for the Owner's own negligence.

8. Dispute Resolution: In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the Owner and the Consultant agree that all

disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation, unless the parties mutually agree otherwise.

The Owner and the Consultant further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

9. Severability: Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the Owner and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
10. Notices: Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.
11. Successors and Assigns: The Owner and Consultant each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns of Owner and Consultant are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, legal representatives and assigns of such other party in respect of all covenants and obligations of this Agreement.

Neither the Owner nor the Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by the Consultant to any Contractor, subcontractor, supplier, other person or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than the Owner and the Consultant.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

OWNER:

CONSULTANT:

By: _____

Title: Mayor Pro-Tem

BUCHER, WILLIS & RATLIFF CORPORATION

By: _____

Title Principal

Address for giving notices:

City of Weston

PO Box 248 / 301 Main St.

Weston, TX 75097-0248

Address for giving notices:

Bucher, Willis & Ratliff Corporation

2620 CR 1106

Anna, Texas 75409

Exhibit A

City of Weston/BWR Master Services Agreement Rate Schedule

Exhibit B

City of Weston/BWR Master Services Agreement Work Order Form

City of Weston/BWR Master Services Agreement Work Order Form

Date: _____

Brief Description of Work: _____

Estimated Hours to Complete Task:

	Estimated Hours	Hourly Rate	=
Principal	X	_____	_____
Senior Professional	X	_____	_____
Professional IV	X	_____	_____
Professional III	X	_____	_____
Professional II	X	_____	_____
Professional I	X	_____	_____
Senior Technical	X	_____	_____
Technical III	X	_____	_____
Technical II	X	_____	_____
Technical I	X	_____	_____
Clerical I	X	_____	_____
Clerical II	X	_____	_____
Subcontractors			_____
Other Direct Costs @ \$5.00 per hour			_____
Total Estimated Cost			_____

Note: These costs are estimated costs only. Owner will be billed in accordance with the current BWR Rate schedule unless other provided in an approved Work Plan.

OWNER:

CONSULTANT:

BUCHER, WILLIS & RATLIFF CORPORATION

By: _____

By: _____

Title: _____

Title: Principal _____

Date: _____

Date: _____